

**OFFICE OF ADMINISTRATIVE HEARINGS:
RULES APPLICABLE IN SPECIFIC CLASSES OF CASES**

CHAPTER 29

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2900 Office of Administrative Hearings: Rules Applicable in Specific Classes of Cases

2900 Appellate Proceedings – In General

2900.1 This Rule, and Rules 2901 through 2912, establish additional procedures for all appellate proceedings in this administrative court.

2900.2 Unless otherwise provided in this Chapter, Rules 2800, 2807-2812, 2814-2816, 2835-2842, and 2899 of Title 1 DCMR Chapter 28 apply to all appellate proceedings.

2900.3 When any procedural matter in an appellate proceeding has not been specifically addressed in these Rules, this administrative court may rely upon the rules of the District of Columbia Court of Appeals as persuasive authority.

2901 Appellate Proceedings – Notice of Appeal

2901.1 A party may commence an appellate proceeding in this administrative court only by filing a notice of appeal with the Clerk. The notice shall include:

- a. a statement, in either the caption or the body of the notice, naming the party or parties filing the appeal;
- b. A copy of the order from which the appeal is taken;
- c. A concise statement indicating why the appellant believes the order is wrong;
- d. The signature, printed full name, address, telephone number, and fax number, if any, of the party or parties taking the appeal or of the attorney filing the notice of appeal; and
- e. A certificate of service showing that the notice has been served upon all other parties who appeared in the proceeding and upon the tribunal that issued the order being appealed.

2901.2 A notice of appeal filed on behalf of more than one party may name those parties generally with terms such as “all respondents,” “the respondents except A,” “the respondents A, B, et al.” or similar terms. An appeal shall not be dismissed for informality of form or title of the notice of appeal, or

for failure to name a party whose intent to appeal is otherwise clear from the notice.

- 2901.3 A notice of appeal filed on behalf of a party who is not represented by counsel is considered filed on behalf of that party and his or her spouse if a party, unless the notice clearly indicates otherwise.
- 2901.4 A notice of appeal filed on behalf of a party who is not represented by counsel who is a co-owner or co-lessee of property is considered filed on behalf of that party and his or her co-owners or co-lessees, unless the notice clearly indicates otherwise.
- 2901.5 Unless otherwise required by statute, any notice of appeal must be filed within fifteen (15) days after service of the final order from which the party is appealing. The filing date of any notice of appeal shall be the date it is received by the Clerk.
- 2901.6 If a party timely files a petition for rehearing or reconsideration in accordance with a statute or the rules of the agency that issued the order, the time to appeal as fixed by Section 2901.5 runs from the date of service of the order disposing of the petition.
- 2901.7 This administrative court has no jurisdiction to extend the deadlines established in Sections 2901.5 and 2901.6.

2902 Appellate Proceedings – Initial Procedures

- 2902.1 Upon the filing of a notice of appeal, the case shall be assigned to an Administrative Law Judge who shall preside in the case. If separate appeals from the same order are filed, they shall be assigned to the same Administrative Law Judge.
- 2902.2 When an appellate proceeding is assigned to an Administrative Law Judge, he or she shall review the notice of appeal and the underlying order and shall make a preliminary determination whether this administrative court has jurisdiction of the appeal.
- 2902.3 If the presiding Administrative Law Judge preliminarily determines that this administrative court has jurisdiction of the appeal, he or she shall issue an order in accordance with Section 2904.1 directing the filing of the record.
- 2902.4 If the presiding Administrative Law Judge preliminarily determines that this administrative court does not have jurisdiction or that there is a substantial question whether this administrative court has jurisdiction, the

Administrative Law Judge shall issue an order directing the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction. Any such order shall contain a statement of the reasons why this administrative court may not have jurisdiction of the appeal. The order shall require the appellant to file a response within fourteen (14) days of service, and shall permit any other party to file a reply within seven (7) days of service of the response. For good cause shown, the Administrative Law Judge may alter those deadlines.

2902.5 Upon considering the response to the order to show cause and any reply, the presiding Administrative Law Judge shall issue an interlocutory order deciding whether this administrative court has jurisdiction of the appeal. If the Administrative Law Judge decides that this administrative court does not have jurisdiction, he or she shall dismiss the appeal. If the Administrative Law Judge decides that this administrative court has jurisdiction, he or she shall issue an order in accordance with Section 2904.1 directing the filing of the record.

2902.6 Sections 2902.2 to 2902.5 of this Rule shall not preclude any party from filing a motion to dismiss the appeal for lack of jurisdiction.

2903 Appellate Proceedings – Stays

2903.1 Filing a notice of appeal does not stay the order being appealed.

2903.2 A party seeking a stay of an order pending appeal ordinarily shall first seek a stay from the tribunal that issued the order. A party may be relieved from this requirement if it demonstrates a compelling reason why it is not possible to seek a stay from the tribunal that issued the order 2903.3 If the tribunal that issued the order denies a stay, a party then may seek a stay from this administrative court by filing a motion for stay. The motion shall state the legal reasons for granting a stay and the facts relied upon. All factual assertions shall be supported by an affidavit or by a statement signed in accordance with Section 2821.7 of Title 1 DCMR Chapter 28.

2903.4 A party seeking a stay shall attach to its motion a copy of the order that it is seeking to stay and a copy of the order denying a stay issued by the tribunal below. The party also shall attach any relevant portions of the record in the tribunal below.

2903.5 In deciding whether to grant a stay, the presiding Administrative Law Judge shall consider whether the movant is likely to succeed on the merits of the appeal, whether denial of the stay will cause irreparable injury, whether granting the stay will harm other parties, and whether the public interest favors granting a stay. *See Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A. 2d 340, 344 (D.C. 1988).

2904 Appellate Proceedings – Filing the Record

- 2904.1 If the presiding Administrative Law Judge preliminarily determines that this administrative court has jurisdiction of an appeal, or issues an interlocutory order determining that this administrative court has jurisdiction pursuant to Section 2902.5, he or she shall issue an order to the tribunal that issued the order on appeal requiring it to file the record in this administrative court. The record shall consist of the following original documents or copies:
- a. The order from which the appeal is taken;
 - b. Any other orders issued by the tribunal in the case;
 - c. The papers and exhibits filed with the agency;
 - d. Any transcript of the proceedings on file with the agency;
and
 - e. A certified list adequately describing all documents, transcripts, exhibits and other materials constituting the record on appeal.
- 2904.2 The tribunal shall file the record within thirty (30) days of service of the order requiring filing, and shall send a copy of the certified list required by Section 2904.1(e) to all parties to the appeal. The presiding Administrative Law Judge may extend the thirty (30)-day deadline for good cause.
- 2904.3 Any party objecting to the transmission of, or to the failure to transmit, any portion of the record must file a motion stating the objection within fifteen (15) days of service of the copy of the certified list required by Section 2904.1(e). Absent good cause, failure to file such a motion shall preclude a party from later objecting to the sufficiency of the record.
- 2904.4 If the tribunal does not file the record within the deadline established by Section 2904.2, the presiding Administrative Law Judge may direct the parties to the appellate proceeding to appear for a prehearing conference to settle the record. Each party shall bring to the conference copies of any documents in its possession that should be included in the record, as required by Section 2904.1. A party's failure to bring a copy of a document to the conference shall be grounds for precluding that party from arguing that the document should be in the record, absent good cause for the failure.

- 2904.5 Prior to any prehearing conference ordered pursuant to Section 2904.4, the representative of any District of Columbia Government party to the appellate proceeding must confer with the docket clerk or other appropriate official of the tribunal whose order is being appealed and must attempt to obtain a copy of the documents required to be in the record pursuant to Section 2904.1. No later than three (3) days before the prehearing conference, the Government representative must file an affidavit demonstrating compliance with this Section.
- 2904.6 When the prehearing conference is convened, the parties initially shall confer with each other to attempt to agree upon the contents of the record. Pursuant to Rule 2815 of Title 1 DCMR Chapter 28, the presiding Administrative Law Judge may designate a staff attorney or mediator to assist the parties in their discussions. If the parties reach agreement upon the contents of the record, they shall file a copy of the documents constituting the record on the day of the prehearing conference or on such other day as the presiding Administrative Law Judge orders, for good cause shown.
- 2904.7 If the parties are unable to agree upon the contents of the record at the prehearing conference, the presiding Administrative Law Judge shall rule upon all disputes concerning the contents of the record at the conference. The parties shall then file copies of the documents constituting the record on the day of the prehearing conference or on such other day as the presiding Administrative Law Judge orders, for good cause shown.
- 2904.8 If the appellant has been served with an order convening a prehearing conference and fails to appear without good cause, the presiding Administrative Law Judge may dismiss the appeal.
- 2904.9 If the appellee has been served with an order convening a prehearing conference and fails to appear without good cause, the conference shall go forward in his or her absence.
- 2904.10 A Government representative who fails, without good cause, to obey an order requiring compliance with Section 2904.5 shall be subject to sanctions in accordance with D.C. Official Code § 2-1831.09(8) and Title 1 DCMR Chapter 28.
- 2904.11 In place of the record on appeal as defined in Section 2904.1, the parties may prepare, sign, and submit to the tribunal that issued the decision on appeal a statement of the case showing how the issues presented by the appeal arose and were decided by the tribunal. The statement must set forth only those facts averred and proved or sought to be proved that were essential to the resolution of the issues. If the statement is accurate, it — together with any additions that the tribunal may consider necessary to a

full presentation of the issues on appeal — must be approved by the tribunal and must then be certified to this administrative court as the record on appeal. Any such statement must be filed within the deadline specified in Section 2904.2.

- 2904.12 The Clerk shall return any record filed by the tribunal that issued the order under review upon the expiration of the deadline for seeking judicial review of this administrative court's order disposing of the appeal, or, if any party seeks judicial review of this administrative court's order, upon the conclusion of all judicial review proceedings. At that time, the Clerk shall also transmit copies of the final order deciding the appeal, any order deciding a motion for reconsideration, and any final order or mandate from a reviewing court.

2905 Appellate Proceedings – Transcripts

- 2905.1 Transcripts are not necessary in every appellate proceeding. A full or partial transcript is necessary only as required by this Rule.

- 2905.2 If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, or that a hearing examiner's ruling at trial was erroneous, the appellant must include in the record a transcript of all the proceedings relevant to the issue. *See Cobb v. Standard Drug Co.*, 453 A.2d 110 (D.C. 1982). Parties should note that, depending upon the issues on appeal, a full transcript of proceedings may not necessarily be required by this Section. A partial transcript may be sufficient if it fully and fairly discloses all proceedings pertinent to the issues on appeal.

- 2905.3 A recording of the hearing does not satisfy the requirement of a transcript.

- 2905.4 It is the appellant's duty to ascertain whether all required transcripts are on file with the tribunal that issued the order being appealed and to arrange for the preparation and filing of any transcript required by this Rule that is not on file with that tribunal.

- 2905.5 The appellant must order all required transcripts within ten (10) days of service of an order in accordance with Section 2904.1 requiring the filing of the record. Unless the entire transcript is ordered, within the ten (10) days provided in the preceding sentence, the appellant must serve on all other parties a statement of the issues the appellant intends to present on appeal and a copy of the transcript order. Within ten (10) days of service of the statement of issues and transcript order, any other party shall serve upon the appellant a designation of additional portions of the transcript to be ordered, which are reasonably necessary for full consideration of the issues raised by the appellant. The appellant shall thereafter order those

additional portions, or shall seek an order from this administrative court requiring the appellee to order those portions. The presiding Administrative Law Judge shall issue such an order only if the appellant demonstrates that the portions ordered by the appellee are not reasonably necessary for full consideration of the issues raised by the appellant.

2905.6 Any transcript ordered by a party pursuant to this Rule shall be filed with this administrative court and not with the tribunal that issued the order being appealed. Unless otherwise ordered by the presiding Administrative Law Judge for good cause shown, a party required to order any transcripts shall file the transcripts within ninety (90) days of the issuance of an order pursuant to Section 2904.1 requiring the filing of the record, and shall make appropriate arrangements with the court reporter to ensure compliance with that deadline. If any transcripts are not filed within the deadline established by this Section, the missing transcripts shall not be considered as part of the record on appeal.

2905.7 Any motion to correct a filed transcript must be filed within fifteen (15) days of the filing of the transcript. The presiding Administrative Law Judge may decide all such motions or, in his or her discretion, may refer the motion to the tribunal that issued the decision under review. Failure to file a motion to correct a transcript within the deadline established by this Section shall preclude a party from challenging the accuracy of the transcript, except that the presiding Administrative Law Judge may ignore obvious typographical errors or other errors where the meaning is clear.

2905.8 Within thirty (30) days of issuance of an order requiring the filing of the record pursuant to Section 2904.1, the appellant shall file and serve a statement that no transcripts shall be ordered or demonstrating that all required transcripts have been ordered and that satisfactory arrangements for the cost of such transcripts have been made with the court reporter. The Chief Administrative Law Judge may prescribe a form to be used in complying with this obligation.

2906 Appellate Proceedings – Briefs

2906.1 After filing of the record, the presiding Administrative Law Judge shall issue an order setting a briefing schedule. Briefs generally shall be due according to the following schedule:

- a. If no transcripts have been ordered, the appellant's brief shall be due thirty (30) days after the filing of the record, the appellee's brief shall be due thirty (30) days after service of the appellant's brief, and the appellant's reply brief, if any, shall be due fourteen (14) days after service of the appellee's brief.

- b. If a transcript has been ordered, the appellant's brief shall be due thirty (30) days after filing of the transcript, or thirty (30) days after expiration of the deadline for filing the transcript, whichever is earlier. The appellee's brief shall then be due thirty (30) days after service of the appellant's brief and the appellant's reply brief, if any, shall be due fourteen (14) days after service of the appellee's brief.
- c. For good cause shown, the presiding Administrative Law Judge may alter the briefing schedule set forth above.

2906.2 As an alternative to filing a brief, an appellant may elect to rely upon the statement in the notice of appeal specifying why the order under review is wrong. *See* Section 2901.1(c). An appellant who elects to do so must file a statement notifying this administrative court of its decision to do so no later than the deadline for the filing of the appellant's brief.

2906.3 If the appellant does not file a brief or a statement pursuant to Section 2906.2 before expiration of the deadline, the presiding Administrative Law Judge may dismiss the appeal. If the appellee does not file a brief before expiration of the deadline, the presiding Administrative Law Judge may decide the appeal based solely upon the appellant's submission.

2906.4 The briefs of the appellant and the appellee shall contain the following, in the order specified:

- a. A cover page containing the caption of the case, the docket number, the title of the document (e.g., "Brief for Appellant," "Brief for Appellee," "Reply Brief for Appellant"), and the name and address of the counsel or individual submitting it;
- b. A table of contents, with page references, unless the brief is ten (10) pages or less.
- c. A statement of the issues presented on appeal;
- d. A statement of the case, briefly describing the nature of the case, the prior proceedings that have occurred and the ruling(s) being appealed, and showing how the issues on appeal were raised in the tribunal whose decision is being appealed;
- e. A statement of facts relevant to the issues presented on appeal, with appropriate references to the record;

- f. An argument, which may be preceded by a summary. The argument shall contain the party's contentions and the reasons for them, with citations to the legal authorities and portions of record upon which the party relies;
- g. A short conclusion stating the precise relief sought;
- h. The signature of the individual filing the brief; and
- i. A certificate of service showing that the brief has been served on all other parties to the appellate proceeding.

2906.5 If the appellant elects to file a reply brief, it shall contain the elements specified in Subsections (a), (b), (f), (g), (h) and (i) of Section 2906.4.

2907 Appellate Proceedings – Oral Argument

2907.1 After reviewing all briefs that have been timely filed, the presiding Administrative Law Judge shall decide whether to hear oral argument. If oral argument is to be heard, the presiding Administrative Law Judge shall issue an order setting the date and time for oral argument and the amount of time allotted to each party. If oral argument shall not be heard, the presiding Administrative Law Judge shall issue an order to that effect.

2907.2 If a party who has been served with an order setting oral argument fails, without good cause, to appear for the argument, the presiding Administrative Law Judge shall proceed to hear argument from any party that does appear.

2907.3 Any party that fails to file a brief or a statement pursuant to Section 2906.2 may not be heard at oral argument.

2908 Appellate Proceedings – Final Orders

2908.1 The presiding Administrative Law Judge shall decide each appellate proceeding on the basis of the record established before the tribunal that issued the decision under review, and shall issue an order explaining the reasons for the decision.

2908.2 Unless otherwise provided by statute, the presiding Administrative Law Judge shall set aside the decision under review only if:

- a. The order was issued without observance of procedures required by law;

- b. The order is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the Constitution or applicable law; or
- c. The order is not supported by substantial evidence in the record as a whole. In evaluating the evidence pursuant to this Subsection (c), the presiding Administrative Law Judge shall apply the same standard used by the District of Columbia Court of Appeals pursuant to Section 11(a)(3)(E) of the Administrative Procedure Act, D.C. Official Code § 2-510(a)(3)(E).

2908.3 The presiding Administrative Law Judge shall apply the rule of harmless error.

2908.4 The presiding Administrative Law Judge may affirm, reverse or modify the order under review and may remand a case for appropriate further proceedings. The presiding Administrative Law Judge may reverse or modify an order and/or remand a case only upon grounds presented to the tribunal below.

2909 Appellate Proceedings – Reconsideration

2909.1 A motion for reconsideration may be filed within ten (10) days of service of an order disposing of an appellate proceeding.

2909.2 Unless otherwise ordered by the presiding Administrative Law Judge, no response shall be filed to a motion for reconsideration of an order disposing of an appellate proceeding. No motion for reconsideration shall be granted unless the presiding Administrative Law Judge has ordered the filing of a response and has reviewed that response.

2909.3 The presiding Administrative Law Judge may issue an order denying a motion for reconsideration summarily, or, in the exercise of his or her discretion, may issue an order stating the reasons for denial of the motion. If the presiding Administrative Law Judge grants a motion for reconsideration, he or she must issue an order stating the reasons for the action.

2910 Appellate Proceedings – Costs and Mandate

2910.1 The prevailing party in an appellate proceeding may recover its costs from the adverse party.

2910.2 Allowable costs are limited to filing fees in this administrative court and the reasonable cost of any transcripts reasonably necessary for the appeal.

- 2910.3 A prevailing party shall file and serve a statement of its recoverable costs within ten (10) days of service of a final order. The pendency of a motion for reconsideration shall not alter this deadline. The statement shall be accompanied by receipts for all costs claimed, along with sufficient information for this administrative court to determine that the transcript costs are reasonable. Failure to file such a statement waives any claim for costs from the adverse party.
- 2910.4 Any opposition to the recovery of costs must be filed and served within seven (7) days of service of the statement of recoverable costs. Failure to file any such opposition waives a party's right to object to the claimed costs.
- 2910.5 After review of the parties' written submissions, the presiding Administrative Law Judge shall issue an order determining the amount of costs that must be paid to the prevailing party.
- 2910.6 This administrative court shall not issue a formal mandate at the conclusion of an appellate proceeding. Except as otherwise provided in this Chapter, the tribunal that issued the decision under review may not take any action in the case until the record is returned to it pursuant to Section 2904.12.

2911 Appellate Proceedings – Pending Cases

- 2911.1 In every appellate proceeding transferred to this administrative court from the Board of Appeals and Review, the presiding Administrative Law Judge may issue an order requiring the appellant to file a statement specifying whether he or she wishes to continue the appeal.
- 2911.2 Any such statement shall be filed on a form approved by the Chief Administrative Law Judge, and shall be filed within thirty (30) days of service of an order issued pursuant to this Rule. Failure to file such a form in response to an order issued pursuant to Section 2911.2 shall be grounds for dismissal of the appellate proceeding for want of prosecution.

2920 Rental Housing Cases: Scope

- 2920.1 The rules in sections 2920-2941 govern proceedings before the Office of Administrative Hearings in rental housing cases. The rules in 14 DCMR Chapter 38 shall govern proceedings before the Rental Housing Commission, and the rules in 14 DCMR Chapters 39 through 43 shall continue to be applicable, except that those rules shall not be interpreted to govern procedure in the Office of Administrative Hearings.

2920.2 If these rules are silent on a procedural issue before the Office of Administrative Hearings, the issue shall be decided by following the rules found in 1 DCMR Chapter 28.

2921 Rental Housing Cases: Filing Petitions and Other Documents

2921.1 All petitions to commence a rental housing case shall be filed with the Rent Administrator in accordance with 14 DCMR 3901.

2921.2 The timeliness of the filing of any petition shall be measured from the date it is properly filed with the Rent Administrator.

2921.3 The Rent Administrator may refuse to accept a petition for filing as provided in 14 DCMR 3901.

2921.4 If the Rent Administrator accepts a petition for filing, he or she shall promptly forward it, along with all accompanying documents, to the Office of Administrative Hearings.

2921.5 In every case forwarded to the Office of Administrative Hearings, all documents other than a petition and accompanying documents shall be filed with the Office of Administrative Hearings, in accordance with 1 DCMR 2810.

2922 Rental Housing Cases: Docketing and Notice

2922.1 Upon receipt of a petition, the Office of Administrative Hearings shall, by certified mail or other form of service which assures delivery of the petition, notify the adverse parties named in the petition of their right to make a written request for a hearing on the petition within 15 days after receipt of the notice.

2922.2 In the case of tenant petitions, the Office of Administrative Hearings shall send a copy of the petition to the housing provider of the housing accommodation at issue, if not named in the petition as an adverse party, in the manner described in section 2922.1.

2922.3 In the case of petitions filed by a housing provider, the housing provider shall provide for each tenant in the housing accommodation one (1) copy of the petition, and an envelope, with priority mail postage prepaid, addressed to each tenant by name and containing the return address of the Office of Administrative Hearings. The Office of Administrative Hearings shall mail the copies to each tenant.

2922.4 In the case of petitions filed by a housing provider concerning a building with 10 or more rental units, the housing provider also shall provide a

service list containing the name and address of each tenant. There shall be a hard copy of the list, along with a computerized version in Microsoft Word format, arranged so that it may be printed onto labels measuring 1 inch by 2 5/8 inches.

2923 Rental Housing Cases: Right to a Hearing and Disposition of Petitions Without Hearings

2923.1 If a hearing is timely requested by any party, the Office of Administrative Hearings shall send notice of the time and place of the hearing by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each party of the party's right to retain legal counsel to represent the party at the hearing.

2923.2 After notice to the parties and an opportunity to be heard, the Administrative Law Judge on his or her own motion may dismiss any petition that does not state a claim for which relief may be granted under the Rental Housing Act.

2923.3 The Administrative Law Judge may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been issued on a petition filed under the Act for adjustment to the same rental unit or units within six (6) months prior to the filing of the petition, unless the previous ruling was without prejudice to refiling.

2924 Rental Housing Cases: Parties

2924.1 Individual tenants involved in any proceeding shall be individually identified.

2924.2 If a tenant association seeks to be a party, the Administrative Law Judge shall determine the identity and number of tenants who are represented by the association.

2924.3 If a majority of tenants are represented by the association, the association shall be a party, and shall be listed in the caption.

2924.4 The housing provider as listed on the registration statement, if any, shall be a party, and shall be named on the caption. If a management agent represents the housing provider in the proceeding, the managing agent also shall be a party, and shall be identified as the agent and named on the caption.

2925 Rental Housing Cases: Substitution or Addition of Parties

- 2925.1 Upon the death of a party, or the dissolution, reorganization, or change of ownership or interest of a party, or a change in the registration statement resulting from an amendment filed under 14 DCMR 4103, the Administrative Law Judge may, upon the motion of a party, the motion of a person seeking to become a party, or the Administrative Law Judge's own motion, substitute or add a party.
- 2925.2 If it appears to the Administrative Law Judge that the parties have been incorrectly named, the Administrative Law Judge may substitute or add the correct parties upon the motion of a party, the motion of a person seeking to become a party, or the Administrative Law Judge's own motion.
- 2925.3 No substitution or addition of parties may occur unless all parties, and all persons that may be substituted or added as parties, are given notice and an opportunity to file written arguments in support of, or in opposition to, the substitution or addition of parties.
- 2925.4 An evidentiary hearing or oral argument on a motion for substitution of parties may be scheduled at the discretion of the Administrative Law Judge.

2926 Rental Housing Cases: Intervenor

- 2926.1 There shall be no intervention as a matter of right in rental housing cases. Intervention by permission may be granted to persons or entities if the proceeding will directly affect their rights or duties and is otherwise appropriate.
- 2926.2 Persons seeking to intervene shall file a motion for intervention stating the reasons why intervention should be permitted, and must serve a copy of the motion upon all parties to the proceeding.
- 2926.3 If a motion for leave to intervene is granted, intervenors may participate only with respect to the issues affecting them, as determined by the Administrative Law Judge.

2927 Rental Housing Cases: Consolidation of Petitions and Expanding the Scope of a Proceeding

- 2927.1 On motion of a party, or upon his or her own motion, an Administrative Law Judge may consolidate two (2) or more petitions where they present identical or similar issues, where they involve the same rental unit or housing accommodation, or in any other circumstance in which

consolidation would expedite the processing of the petitions and would not adversely affect the interests of the parties.

- 2927.2 If the Administrative Law Judge determines that the issues raised in a tenant petition affect other tenants or all tenants in the housing accommodation, the Administrative Law Judge may expand the scope of the proceeding to include all affected tenants; provided, that notice shall be given to the additional tenants that they have the right to participate in the proceeding.
- 2927.3 The notice to other tenants shall state the issues to be decided in the proceeding and that any decision shall be binding upon them.
- 2927.4 The Administrative Law Judge shall also provide notice to the housing provider of the determination to expand the scope of the proceeding.
- 2927.5 Tenants and the housing provider shall have a reasonable opportunity to present any arguments in support of or opposition to the Administrative Law Judge's determination.

2928 Rental Housing Cases: Service

- 2928.1 All documents required to be served upon any person under this chapter shall be served upon that person or upon the representative designated by that person, or by law, to receive service of documents.
- 2928.2 When a party has a representative of record, service shall be made upon the representative.
- 2928.3 Service shall be completed in accordance with § 904 of the Act, D.C. Official Code § 42-3509.04.
- 2928.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.
- 2928.5 Service by mail shall be complete upon mailing.
- 2928.6 All documents filed with the Office of Administrative Hearings shall be served on the other parties on the same day they are filed with the Office of Administrative Hearings.
- 2928.7 A certificate of service shall be filed with every document filed with the Office of Administrative Hearings. The certificate of service shall state the date of service, the persons served, the address at which service was made, and the manner of service.

2929 Rental Housing Cases: Computation of Time

2929.1 The rules governing computation of time are found at 1 DCMR 2811.

2930 Rental Housing Cases: Conciliation, Arbitration and Mediation

2930.1 The parties may request conciliation or arbitration of any dispute by the RACD in accordance with 14 DCMR 3913 and 3914.

2930.2 The parties may request mediation of any dispute pursuant to 1 DCMR 2815.

2930.3 The deadline for issuance of any decision by the Office of Administrative Hearings shall be extended by the number of days during which the parties engage in conciliation, arbitration or mediation pursuant to this section.

2931 Rental Housing Cases: Hearings

2931.1 Upon the filing of a petition, or an order to show cause, an Administrative Law Judge shall issue a Case Management Order setting a hearing date. In addition to, or instead of, a hearing date, the Administrative Law Judge may set a date for a status conference.

2931.2 All hearings before the Office of Administrative Hearings shall be open to the public.

2932 Rental Housing Cases: Burden of Proof

2932.1 Unless otherwise provided in this Section, the proponent of an order shall have the burden of establishing each fact essential to the order by a preponderance of the evidence.

2932.2 In show cause hearings, the burden of proof shall rest upon the Rent Administrator.

2933.3 In retaliation cases, the burden of proof shall be as stated in 14 DCMR 4303.

2933 Rental Housing Cases: Appearances and Representation

2933.1 Persons authorized to appear before the Office of Administrative Hearings by 1 DCMR 2838 and 1 DCMR 2839 may represent parties in rental housing cases.

2933.2 In addition, a member or members selected by the members of a tenant association may represent the association and its members.

2933.3 The provisions of 1 DCMR 2838 and 2839, concerning discipline of persons appearing before the Office of Administrative Hearings, apply to representatives in rental housing cases.

2933.4 If it appears to the Administrative Law Judge at any time during the proceedings that the matter under review is so complicated or that the potential liabilities are so great that in the interest of justice a party ought to be represented by an attorney, the Administrative Law Judge shall explain to the party the advantages of obtaining an attorney, and shall explain the party's right to a continuance to obtain an attorney.

2933.5 If the party agrees to obtain the services of an attorney, the opposing party shall be so advised, and the hearing on the matter shall be continued for a reasonable time in order to allow the party to retain counsel and prepare for a hearing. The continuance shall not exceed thirty (30) days.

2934 Rental Housing Cases: Documents Filed with the RACD

2934.1 Any party that wishes the Administrative Law Judge to review any document concerning a rental housing accommodation that has been filed with the RACD must introduce a copy of that document into evidence. The document shall be admitted into evidence only in the following circumstances:

- (a) If a copy with an original file stamp (not a copy of the file stamp) is provided; or
- (b) If a copy certified by the Rent Administrator or an authorized employee of RACD is provided.

An Administrative Law Judge shall permit a reasonable continuance to enable a party to obtain a copy of any such document.

2935 Rental Housing Cases: Interlocutory Appeals

2935.1 A ruling of an Administrative Law Judge in a rental housing proceeding may not be appealed before issuance of a final order unless the presiding Administrative Law Judge certifies the ruling for review by the Commission.

2935.2 A party may move the Administrative Law Judge to certify to the Commission an interlocutory appeal of any ruling other than a final order.

2935.3 The Administrative Law Judge shall certify an interlocutory appeal only if he or she determines that the issue presented is of such importance to the

proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

- (a) The ruling involves an important question of law or policy requiring interpretation of the Act, and about which there is substantial basis for difference of opinion; and
- (b) Either of the following applies:
 - (1) An immediate ruling will materially advance the completion of the proceeding; or
 - (2) Denial of an immediate ruling will cause undue harm to the parties or the public.

2935.4 A party seeking review by interlocutory appeal shall file a motion for certification within two (2) days of service of a ruling by the Administrative Law Judge. The Administrative Law Judge shall rule on the motion within five (5) days following the filing of the motion.

2935.5 If certification is denied, the ruling may be reviewed on appeal from a final order of the Administrative Law Judge.

2935.6 The Administrative Law Judge may stay the proceeding while an interlocutory appeal is pending.

2936 Rental Housing Cases: Final Orders

2936.1 The Office of Administrative Hearings shall serve all final orders in rental housing cases upon the parties, by certified mail or by other form of service that assures delivery of the decision to the parties.

2936.2 The Office of Administrative Hearings also shall serve copies of all final orders in rental housing cases upon the Rent Administrator and the Commission.

2937 Reconsideration

2937.1 Any party served with a final order may file a motion for reconsideration within ten (10) days of service of that decision.

2937.2 A motion for reconsideration shall be granted only for the following reasons:

- (a) if there has been an intervening change in the law;
- (b) if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration;
- (c) if there is a clear error of law in the final order;
- (d) if the final order contains typographical, numerical, or technical errors; or
- (e) if a party shows that there was a good reason for not attending the hearing.

2937.3 As required by D.C. Official Code § 2-1831.16(a), the filing of a motion for reconsideration shall not stay a final order unless the Administrative Law Judge grants a stay or applicable law requires a stay.

2937.4 A motion for reconsideration shall be decided by the Administrative Law Judge within thirty (30) days of its filing.

2937.5 If an Administrative Law Judge fails to act upon a motion for reconsideration within the time limit established by section 2937.4, the motion shall be denied by operation of law.

2937.6 If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion is decided, or denied by operation of law.

2938 Rental Housing Cases: Show Cause Hearings

2938.1 A show cause hearing is a proceeding initiated by the Rent Administrator after an investigation by the Rent Administrator has resulted in a determination that there are substantial grounds to believe that violations of the Act may have occurred.

2938.2 If an investigation by the Rent Administrator finds substantial grounds to believe that possible violations of the Act have occurred, the Rent Administrator may file with the Office of Administrative Hearings an order to show cause, and shall serve the notice upon the alleged violator.

2938.3 The order to show cause shall state clearly the section of the Act or applicable rules that allegedly have been violated, along with a brief statement of the evidence found during the investigation that supports the determination that a violation has occurred.

2938.4 The order to show cause also shall set forth the proposed corrective action that the Rent Administrator seeks, or the sanction that the Rent Administrator seeks to have imposed upon the alleged violator.

2938.5 Upon the filing of an order to show cause, the case shall proceed in accordance with the procedures set forth in this chapter.

2939 Rental Housing Cases: Official Record of a Proceeding

2939.1 The record of a proceeding in a rental housing case shall consist of the following:

- (a) The final order and any interlocutory orders of the Administrative Law Judge;
- (b) The recordings or any transcripts of the hearings before the Administrative Law Judge;
- (c) All documents and exhibits offered into evidence at the hearing;
- (d) Notices of hearings and proofs of service; and
- (e) All pleadings or other documents filed by the parties or the Rent Administrator at the Office of Administrative Hearings.

2940 Rental Housing Cases: Relief from a Final Order

2940.1 Motions for relief from a final order are governed by 1 DCMR 2833.

2941 Rental Housing Cases: Attorney's Fees

2941.1 All motions for an award of attorney's fees in a rental housing case shall be filed within ten (10) days of service of the final order.

2941.2 The award of attorney's fees shall be governed by 14 DCMR 4019.

2942-2969 Reserved

2970 Public Benefits Cases: Scope

2970.1. Sections 2970 to 2978 contain the rules for hearings at the Office of Administrative hearings concerning the following kinds of benefits:

Medicaid

Temporary Assistance for Needy Families ("TANF")

Food Stamps

Interim Disability Assistance

Shelter and services for homeless persons

General Assistance for Children

Program on Work, Employment and Responsibility ("POWER")

Burial Assistance

Any other benefits provided by the Department of Human Services, except for benefits provided by the Rehabilitation Services Administration

Low Income Home Energy Assistance Program benefits provided by the District of Columbia Energy Office.

2970.2 Sections 2970 to 2978 also apply to hearings requested by the Department of Human Services when it seeks to disqualify someone from receiving Food Stamps benefits due to an intentional program violation.

2970.3 If a circumstance arises that is not covered by any of the rules in sections 2970 to 2978, the rules of the Office of Administrative Hearings found in 1 DCMR Chapter 28 shall apply.

2970.4. If there is a conflict between any federal law or regulation and anything in these rules, the federal law or regulation shall control.

2970.5 If there is a conflict between any District of Columbia statute and anything in these rules, the District of Columbia statute shall control.

2970.6 If there is a conflict between any other agency's procedural rules or regulations and these rules, these rules shall control.

2971 Public Benefits Cases: How to Request a Hearing

2971.1 A hearing can be requested in writing, in person, or by telephone.

2971.2 To request a hearing in writing, a person may:

- (a) Fill out a hearing request form at a Department of Human Services service center, or at the Office of Administrative Hearings; or
- (b) Send a hearing request form to the Department of Human Services or the Office of Administrative Hearings; or
- (c) Send a letter to the Department of Human Services or the Office of Administrative Hearings with a clear statement that he or she wishes to have a hearing. The letter must describe both the type of benefits at issue and the action or inaction to which the person objects. The letter must contain the name, address and telephone number of the person requesting a hearing; or
- (d) In addition, if a person wants a hearing concerning Medicaid benefits, he or she also can send or bring a hearing request form, or a letter requesting a hearing to the Department of Health.
- (e) In addition, if a person wants a hearing concerning Low Income Home Energy Assistance Program benefits, he or she also can send or bring a hearing request form to the District of Columbia Energy Office.

2971.3. Forms for requesting hearings shall be available at the Office of Administrative Hearings, at all service centers of the Department of Human Services, at the Department of Health and at the District of Columbia Energy Office.

2971.4 To request a hearing in person, a person may:

- (a) Come to a Department of Human Services service center; or
- (b) Come to the Office of Administrative Hearings; or
- (c) Come to the Department of Health, for a hearing concerning Medicaid; or

- (d) Come to the District of Columbia Energy Office, for a hearing concerning Low Income Home Energy Assistance Program benefits.

2971.5 To request a hearing by telephone, a person may

- (a) Telephone the Department of Human Services; or
- (b) Telephone the Office of Administrative Hearings.

2971.6 Any government agency that receives a written hearing request must file it with the Clerk of the Office of Administrative Hearings within three (3) business days of receiving it.

2971.7 Any government agency that receives an oral or telephone hearing request from an individual must complete a hearing request form and file it with the Clerk of the Office of Administrative Hearings within three (3) business days of receiving it.

2971.8 If the Office of Administrative Hearings receives a written hearing request from an individual, the docket clerk will send it to the agency whose decision is being challenged.

2971.9 If the Office of Administrative Hearings receives an oral or telephone hearing request from an individual, the docket clerk shall complete a written summary of the request and send it to the agency or service provider whose decision is being challenged.

2971.10 The Department of Human Services can request a hearing concerning a claim that a Food Stamps recipient should be disqualified from receiving benefits due to an intentional program violation by filing a hearing request form, approved by the Chief Administrative Law Judge, at the Office of Administrative Hearings.

2972 Public Benefits Cases: Representatives

2972.1 As required by Federal law, *see, e.g.* 42 C.F.R. 431.206(b)(3) and 7 C.F.R. 273.15(f), and the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.04(a), an applicant for, or recipient of, the benefits listed in Rule 2970.1, may be represented by an attorney, a relative, a friend or other representative who is not employed by the District of Columbia government.

2972.2 Any person who is not a lawyer who requests a hearing on behalf of someone else must file a statement, signed by the Petitioner authorizing that person to be a representative. A hearing request is subject to dismissal

unless that statement is filed. Before dismissing a case under this Rule, an Administrative Law Judge shall notify the party's representative of this requirement.

- 2972.3 The practice of lawyers or other representatives of parties shall be regulated in accordance with OAH Rules 2838 and 2839, 1 DCMR 2838 and 2839.

2973 Public Benefits Cases: Hearing Dates

- 2973.1 After a hearing request is filed, an Administrative Law Judge ordinarily will issue a Hearing Notice that will schedule a hearing date. If any applicable law requires that an administrative review be completed before a hearing takes place, a hearing will not be scheduled until the administrative review has been completed.

- 2973.2 Instead of, or in addition to, scheduling a hearing date, an Administrative Law Judge may schedule a status conference or other preliminary hearing in order to simplify the issues in the case, identify the parties' legal and factual positions, rule on any preliminary legal issues, or for any other purpose that could lead to the efficient resolution of the case.

- 2973.3 Only an Administrative Law Judge can change a hearing date.

- 2973.4 Any party may ask an Administrative Law Judge for a different hearing date by submitting a form approved by the Chief Administrative Law Judge. Copies of that form will be sent with every Hearing Notice, and are available from the Office of Administrative Hearings.

2974 Public Benefits Cases: Administrative Reviews

- 2974.1 An administrative review is an informal meeting between a person who has requested a hearing and a representative of the agency or service provider whose action or inaction is being challenged by that person. The purpose of an administrative review is to determine whether the agency's or service provider's position is valid and, if possible, to achieve an informal solution of the claim.

- 2974.2 An agency or service provider shall offer each person who requests a hearing an opportunity for an administrative review, if required by law. At least five days before the hearing date, the agency or service provider shall file and send to Petitioner and his or her representative a status report, which says whether or not an administrative review was held, and the results of any review.

2974.3 In cases involving shelter or other services for homeless persons, as required by the Homeless Services Reform Act of 2005, D.C. Official Code §§ 4-1601.01 *et seq.*, the Department of Human Services shall conduct the administrative review.

2974.4 As required by law, a government agency or shelter shall make the case file available to the Petitioner.

2975 Public Benefits Cases: Hearings

2975.1. At each hearing, the Administrative Law Judge shall decide the order in which the parties will present their cases.

2975.2 If a party who requests a hearing fails to attend the hearing without good cause, the case may be dismissed with prejudice. "Good cause" includes, but is not limited to serious illness, an accident, a childcare problem, severe weather conditions, or other emergency.

2975.3. If the agency or service provider whose action or inaction is being challenged fails to attend the hearing, a default order may be entered, granting the Petitioner the relief that he or she seeks.

2975.4 If the respondent in a Food Stamps Intentional Program Violation case fails to appear for a hearing, the Government must still prove its case.

2975.5. Parties shall have the following rights at a hearing:

- (a) The right to testify in support of their case, and to have other witnesses testify for them;
- (b) The right to cross-examine witnesses called by the other party;
- (c) The right to examine all exhibits offered into evidence by the other party and to object to the admission of any testimony or other evidence;
- (d) The right to subpoena witnesses, as provided in Rule 2976;
- (e) The right to a representative, as provided in Rule 2972.

2975.6 At a hearing, both the Petitioner and the Government's representatives may present evidence. "Evidence" includes sworn testimony by the Petitioner, the Government's representative and any witnesses that either of them may present. "Evidence" also includes documents, photographs or

any other item that either the Petitioner or the Government's representative believes may help the Administrative Law Judge to decide the case.

2975.7 At least seven (7) days before the hearing date, each party shall file with the Office of Administrative Hearings copies of any documents, photographs or other items that the party may want the Administrative Law Judge to consider at the hearing. Copies must be sent to the other party in the following manner:

- (a) Any Government agency or service provider must send copies to all other parties;
- (b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;
- (c) A shelter resident must deliver a copy to the shelter director if the shelter makes free copying services available to the shelter resident for that purpose;
- (d) For other individuals, the Office of Administrative Hearings will deliver copies by interagency mail to the Department of Human Services, the Department of Health or the District of Columbia Energy Office, as appropriate.

2975.8 If any item is not filed according to the requirements of Rule 2975.7, and the other party shows that it has been unfairly surprised, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party an opportunity to bring in responsive evidence.

2975.9 If any party demonstrates that it has been unfairly surprised by the appearance of a witness, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party an opportunity to prepare for the witness' testimony. If a witness list has been filed and sent to the other party in the manner provided by Rule 2975.7 at least seven (7) days before the hearing, the Administrative Law Judge shall find that there has been no unfair surprise.

2976 Public Benefits Cases: Subpoenas

2976.1. The person requesting the hearing, the respondent in a Food Stamps Intentional Program Violation case, and the agency or service provider whose decision is being challenged may request the Administrative Law Judge to issue a subpoena to require a witness to attend the hearing.

- 2976.2 The Administrative Law Judge will issue a subpoena under this rule if it is unlikely that the witness will be able to provide testimony that will be helpful in deciding the case, and if requiring the witness to appear will not be unduly burdensome, or otherwise contrary to law.
- 2976.3 The Petitioner or the Government also may request a subpoena to require a witness to bring documents, photographs or other things to the hearing. The Administrative Law Judge will issue a subpoena under this rule if it is likely that the requested items will be helpful in deciding the case, and if requiring those items to be produced will not be unduly burdensome, or otherwise contrary to law.
- 2976.4 A form to be used to request a subpoena is available from the Office of Administrative Hearings.
- 2976.5 If an Administrative Law Judge issues a subpoena, the party requesting the subpoena is responsible for delivering it to the person to whom the subpoena has been issued.

2977 Public Benefits Cases: Deadlines

- 2977.1 As required by Federal law, 7 CFR 273.15(c), decisions in cases involving Food Stamps benefits shall be issued and served upon the parties within sixty (60) days of receipt of the hearing request, except that in Intentional Program violation cases, as required by 7 CFR 273.16(e)(2)(iv), the decisions shall be issued and served within ninety (90) days after a hearing notice has been issued.
- 2977.2 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.12(a), decisions shall be issued and served upon the parties within sixty (60) days of receipt of the hearing request in cases involving the following public benefit programs: Temporary Assistance for Needy Families (TANF); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility (POWER); and Medicaid.
- 2977.4 As required by the Homeless Services Reform Act of 2005, D.C. Official Code § 4-1601.25(f)(3)(C), decisions in cases involving shelter or other services provided for homeless persons shall be issued and served upon the parties within fifteen (15) days of the completion of the hearing.
- 2977.5 In all cases described in subsections 1 through 3, if a postponement of the hearing date is granted to the Petitioner, the deadline for the issuance and service of the decision shall be extended for as many days as the hearing is

postponed.

2978 Public Benefits Cases: Reconsideration

2978.1 Within ten (10) days of service of a final order, any party may ask for reconsideration of that order.

2978.2 Reconsideration of a final order shall be granted only for the following reasons:

- (a) if there has been an intervening change in the law; or
- (b) if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration; or
- (c) if there is a clear error of law in the Final Order; or
- (d) if a party shows that there was a good reason for not attending the hearing.

2979-2998 Reserved

2999 Appellate Proceedings – Definitions

Unless otherwise provided, the definitions in Title 1 DCMR Chapter 28 apply to this Chapter.

"Commission" means the Rental Housing Commission.

"RACD" means the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs.

"Rental Housing Act" means the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985, D.C. Official Code § 42-3501.01 *et seq.*

"Rental housing cases" means cases initiated pursuant to the Rental Housing Act, but does not include petitions for declaratory orders pursuant to the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, effective September 10, 1980, D.C. Official Code § 42-3401.01, *et seq.*